

**Testimony of Alison Hirschel, Michigan Poverty Law Project
before the House Senior Health, Security, and Retirement Committee
regarding H.B. 4789**

October 11, 2005

Good morning. I am Alison Hirschel. I am an elder law attorney at the Michigan Poverty Law Project and counsel to the Michigan Campaign for Quality Care, a statewide, grassroots, nonpartisan organization that seeks better care, better quality of life, and better options for Michigan's long term care consumers. I am here today on behalf of the Campaign and the Michigan Advocacy Project.

I first want to thank Rep. Vander Veen, her staff, and Stacy Hettiger for their generous, patient, and collaborative spirit in working with all stakeholders to assure this bill serves the best interests of nursing home residents. Despite a number of amendments that I believe substantially improve this bill, however, I do have two significant concerns.

Before addressing those concerns, I'd like to give you a little background on the development of a dining assistant program in Michigan. As you know, dining assistants, also known as "feeding assistants," are staff with significantly less training than certified nursing assistants whose only function in the nursing home is to assist residents with meals. When the Centers for Medicare and Medicaid Services first permitted states to authorize the use of feeding assistants in nursing homes—a complete reversal of its long-standing policy on the subject—the Michigan Campaign for Quality Care and others expressed concern that feeding assistants might have inadequate training or be used in situations in which residents would be put at risk; might be used to replace more highly trained and highly paid staff; and, as single task workers, would not promote progressive notions of the value of a holistic approach to resident care. Moreover, while we know that malnutrition and dehydration are very serious problems in nursing facilities, there has been no academic study or compilation of data to date that assures us that the use of feeding assistants has a positive impact on residents.

As a result of these concerns, the Michigan Department of Community Health convened a dining assistant workgroup with representatives of the state, providers, and advocates. This group, on which I was pleased to serve, worked cooperatively for more than a year to develop a careful dining assistant pilot project with many safeguards for residents. This pilot project is now being tested in a number of facilities across the state. Moreover, to assure that we learn from the pilot project, the Department has wisely funded a study by highly regarded researchers at Michigan State University to assess the impact on residents and facility staff of the presence of dining assistants. This study will be the first in the country to assess the value of dining assistants and we anticipate a report will be issued next summer. This study will be crucial in determining the wisdom of expanding dining assistants to facilities across the state and shaping the requirements for any such program.

My two concerns with HB 4789 arise in the instances in which it departs from the safeguards we established in the dining assistant pilot project. First, in the DCH workgroup that developed the pilot project, there was unanimous and early agreement that dining assistants should only be permitted to feed residents in designated dining areas within the direct line of vision of more qualified staff. Dining assistants were not to be trained in the Heimlich maneuver and the risk of residents choking or aspirating during meal time was a very real concern; if residents choked without more qualified staff in the immediate vicinity, they were at risk of dying. And although dining assistants are not to be assigned to residents with complex feeding problems, Dr. Jeannie Kayser-Jones, an nationally recognized expert in nursing home resident nutrition at the University of California-San Francisco, documented that ***nursing facilities fail to recognize swallowing disorders in three quarters of the residents who have them.*** And she notes that ***residents with swallowing disorders who do not receive proper care are at risk of dehydration, malnutrition, aspiration pneumonia, and asphyxiation.***

While HB 4789 requires that a RN or LPN be “immediately available” to assist a resident who is being fed by a dining assistant in his or her room, “immediately available” is defined as including being able to respond by “call light, radio, pager, or other method of communication.” Anyone with any experience in nursing homes and an understanding of the shortages of nurses in facilities will understand that relying on a call light, for example, might mean waiting 45 minutes for help to arrive and that will be too late for a resident who is choking or aspirating food. It simply is not worth the significant, potentially life threatening risk to residents to permit dining assistants to feed residents in their rooms out of the line of vision of nursing personnel. However, if the legislature chooses to permit this dangerous practice, I would suggest the bill require that dining assistants be trained in the Heimlich maneuver—though I fear that dining assistants with little training could harm fragile residents—as a less dangerous option than leaving a resident who is choking at the mercy of a call light.

My second concern is that the bill permits dining assistants to be used in facilities with recent, serious licensing deficiencies if they receive written approval from the Department to do so. The DCH workgroup barred facilities with very serious deficiencies from participating in the pilot project because we feared those facilities might be unable to provide adequate training and supervision to dining assistants and were more likely to violate the requirements of the dining assistant program. I urge the Committee to amend this bill to include complete bans on the use of dining assistants in those homes that have had the most serious violations. Permission to use dining assistants should be a privilege, and it should be earned.

Thank you for the opportunity to testify today and for this Committee’s continuing concern with the needs of vulnerable nursing home residents.